

This Opinion is not a  
Precedent of the TTAB

Mailed: February 17, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re People's Ventures, LLC*

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Serial No. 88003115

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David R. Welch of D|R Welch Attorneys at Law,  
for People's Ventures, LLC.

Michelle Ribaudo, Trademark Examining Attorney, Law Office 126,  
Andrew Lawrence, Managing Attorney.

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Before Lykos, Goodman and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

PEOPLE'S VENTURES, LLC ("Applicant") seeks registration on the Principal Register of the mark shown below for "Clothing, namely, shirts, t-shirts, tops, tank tops, sweatshirts, hats, and jackets" in International Class 25:<sup>1</sup>

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<sup>1</sup> Application Serial No. 88003115 was filed on June 15, 2018, based upon Applicant's claim of first use anywhere and use in commerce since at least as early as August 15, 2015 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). Applicant provided the following description of the mark: The mark consists of the word "PEOPLE's" in all capital letters with the second letter "P" extending into roots below the word. Color is not claimed as a feature of the mark.



The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d) on the basis of likelihood of confusion with PEOPLES GARMENT CO. (standard characters, GARMENT CO. disclaimed) for "t-shirts; sweatshirts."<sup>2</sup>

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Page references to the application record refer to the online database page of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

Applicant's brief is at 8 TTABVUE; the Examining Attorney's brief is at 10 TTABVUE; Applicant's reply brief is at 11 TTABVUE.

<sup>2</sup> Registration No. 5437002 issued April 3, 2018. In her initial refusal, the Examining Attorney refused registration based on four marks containing the term PEOPLE'S/PEOPLES for clothing or footwear and indicated that there were three additional conflicting applications containing the term PEOPLE'S for clothing. September 17, 2018 Office Action. The cited registered marks were Reg. No. 3775003 for the mark PEOPLE'S SHOES OF ITALY (shoes disclaimed) for footwear namely, shoes; Reg. No. 4342637 for the mark THE PEOPLE'S MARATHON (MARATHON disclaimed) for shirts; t-shirts; Reg. No. 5130486 for the mark THE PEOPLE'S GAMES (GAMES disclaimed) for clothing that includes, shirts, t-shirts, sweatshirts; and Reg. No. 5437002 (the cited mark) for the mark PEOPLE'S GARMENT CO. for t-shirts and sweatshirts. Sep. 17, 2018 Office Action at TSDR 1. After Applicant's response, the Examining Attorney issued a combined suspension letter and nonfinal action, refusing registration on one of the applications that had now registered (Reg. No. 5568156 for the mark PEOPLE'S COUTURE (COUTURE disclaimed) for various clothing items), and suspending the application pending registration or abandonment of the remaining conflicting applications. April 11, 2019 suspension letter at TSDR 1. The suspension letter contained a heading that stated NO RESPONSE IS NEEDED and ended with 'No response to this notice is necessary,' however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online." *Id.* After the two remaining conflicting applications abandoned, the Examining Attorney issued a final refusal on all cited registrations. June 16, 2020 Office Action. Four of the cited registrations: Reg. No. 3775003 for the mark PEOPLE'S SHOES OF ITALY, Reg. No. 4342637 for the mark THE PEOPLE'S MARATHON, Reg. No. 5130486 for the mark THE

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

## I. Evidentiary Issues

Before proceeding to the merits of the refusal, we address evidentiary matters raised by the Examining Attorney's objections in her brief.<sup>3</sup> 10 TTABVUE 5-6.

### A. Third Party Registrations

The Examining Attorney has objected to a list of eleven third-party registrations (consisting of a composite mark containing the term PEOPLE or PEOPLE'S, registration number, type of goods and owner) set out in Applicant's opening brief. 10 TTABVUE 5. These same registrations (in addition to a number of others) were listed in Applicant's March 18, 2019 response to office action and this response was attached as an exhibit to Applicant's January 19, 2021 request for reconsideration. In the April 11, 2019 suspension letter, combined with a non-final Section 2(d) refusal to register and citing an additional registration against Applicant's mark, the Examining Attorney advised Applicant that the list did not make the registrations of record and

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PEOPLE'S GAMES, and Reg. No. 5568156 for the mark PEOPLE'S COUTURE were later withdrawn in the Examining Attorney's May 28, 2021 Denial of Reconsideration at TSDR 1.

<sup>3</sup> The Examining Attorney also points out that Applicant has referenced four non-existent exhibits to the brief in its argument, stating that these statements are references to evidence not in the record. 10 TTABVUE. To the extent Applicant is referring to evidence not in the record, the statements have not been considered.

The Examining Attorney is incorrect, however, that Applicant did not submit evidence of Registrant's use of PPLS. Applicant incorporated this evidence into Applicant's request for reconsideration. January 19, 2021 Request for Reconsideration at TSDR 9.

therefore would not be considered. *Id.* at TSDR 1. Applicant was advised that in order to make third-party registrations part of the record, Applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO's automated systems, prior to appeal. *Id.* See *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1372 (TTAB 2006) (submission of list of registrations insufficient to make them of record).

The evidentiary record in an application should be complete prior to the filing of an ex parte appeal to the Board. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). During prosecution, Applicant was advised that the mere listing of third-party registrations does not make them of record. Applicant could have made such registrations properly of record with its request for reconsideration but failed to do so. In view thereof, the Examining Attorney's objection is sustained. We have given no consideration to the third-party registrations in this excerpted list. See *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019).

#### B. References to Tess Searches

The Examining Attorney also objects to Applicant's reference to two TESS searches on the USPTO electronic database for International Class 25 registrations containing the term PEOPLES and a separate search for those registrations containing the term PEOPLES that list t-shirts and sweatshirts as goods. 10 TTABVUE 5.

Factual statements made in the brief can be given no consideration unless they are supported by evidence properly made of record. In this case, the TESS searches

were not based on evidence that is in the record, and therefore, the Examining Attorney's objection is sustained. The TESS search results have not been considered.

### C. Dictionary Definition

The Examining Attorney also has objected to a dictionary definition for "peoples" contained in Applicant's brief, taken from thefreedictionary.com. 10 TTABVUE 5.

Applicant did not attach a copy of the definition nor did it request judicial notice. However, it is well settled that the Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). *See also In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). We take judicial notice of the dictionary definition of PEOPLE which is "human beings as a group : all or most people" and the plural PEOPLES which is "human beings making up a group or assembly or linked by a common interest." Merriam-Webster Dictionary, merriam webster.com. <https://www.merriam-webster.com/dictionary/people> (accessed February 15, 2022).

## II. Applicable Law

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors and others are discussed below.

#### A. Similarity of the Goods

We first consider the second *DuPont* factor, “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 177 USPQ at 567. *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that the goods emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness

is established for any item of identified goods or services within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Applicant argues that “Applicant’s and Registrant’s goods are non-competitive, and only distantly related,” as to the type of clothing, i.e., t-shirts, arguing that “Registrant’s goods are strictly limited to sports memorabilia for basketball, baseball, hockey, and football” and that “Applicant’s goods have absolutely no affiliation with sports or sports memorabilia.” Applicant’s brief, 8 TTABVUE 26.

However, the relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration, and not on real-world conditions. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017) (“In reviewing the second factor, ‘we consider the applicant's goods as set forth in its application, and the [registrant’s] goods as set forth in its registration”).

Applicant’s goods are “Clothing, namely, shirts, t-shirts, tops, tank tops, sweatshirts, hats, and jackets” and Registrant’s goods are “t-shirts; sweatshirts.” Applicant’s “t-shirts” and “sweatshirts” are identical to Registrant’s “t-shirts” and “sweatshirts.”

Applicant’s shirts, tops, tank tops, hats and jackets are closely related to Registrant’s other clothing items. The relatedness of at least Applicant’s tank tops and jackets is demonstrated by the evidence submitted by the Examining Attorney of third-party retailer websites the Gap and Forever 21, showing that companies that sell t-shirts and sweatshirts also sell jackets and tank tops under the same mark.

September 17, 2018 Office Action at TSDR 48-98; July 16, 2020 Office Action at TSDR 15-60. These webpages also show that jackets are worn with t-shirts and sweatshirts and that t-shirts and sweatshirts are worn with other clothing, also making them complementary goods.

We find the goods are legally identical in part and otherwise related. This *DuPont* factor favors a finding of likelihood of confusion.

#### B. Similarity of the Trade Channels and Classes of Consumers

We turn to the third *DuPont* factor which requires us to consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567.

Applicant argues that “Registrant’s goods are directed to sports enthusiasts” and “targets a niche market, and a particular channel of trade.” Applicant’s brief, 8 TTABVUE 27. Applicant argues that its goods have no relationship or similarity with sports memorabilia and “if sold in the same store, they would be in completely different sections.” Applicant’s brief, 8 TTABVUE 27. Applicant submits that Applicant’s and Registrant’s goods are sold to completely different markets and consumers. Applicant’s brief, 8 TTABVUE 27.

However, “the third *DuPont* factor—like the second factor—must be evaluated with an eye toward the channels specified in the application and registration, not those as they exist in the real world.” *In re Detroit Ath. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018).

With regard to the identical in part clothing items, we may presume that these identical goods will move in the same trade channels (e.g., clothing stores, specialty stores, department stores, and the like). *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

In addition, as to the related goods, the Examining Attorney's third-party website evidence discussed above shows that the goods are offered together by the same online retail clothing stores. *See, e.g., In re Davey Prods., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272-73 (TTAB 2009) (website evidence shows same or overlapping channels of trade and classes of customers).

As to the class of purchasers, ordinary consumers are the potential purchasers of Applicant's and Registrant's clothing.

We find that the channels of trade and classes of consumers will overlap. This *DuPont* factor favors a finding of likelihood of confusion.

### C. Strength of the marks

Because the strength or weakness of the cited mark informs our comparison of the marks, we address Applicant's arguments that the cited mark is weak and entitled to a narrow scope of protection.

In determining the strength of the cited mark, we consider both its inherent strength, based on the nature of the mark itself, and its commercial strength, based

on marketplace recognition of the mark. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”); *Top Tobacco, L.P. v. N. Atl. Operating Co., Inc.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength). In tandem, if there is evidence in the record, we consider whether the mark has commercial weakness in the marketplace. *DuPont*, 177 USPQ at 567.

1. The number and nature of similar marks in use on similar goods

The sixth *DuPont* factor considers “the number and nature of similar marks in use on similar goods [or services].” *DuPont*, 177 USPQ at 567. Third-party uses may bear on the commercial weakness of a mark,” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017), and may be “relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)

In its reconsideration request, Applicant submitted the specimens from the following registrations that had been cited against Applicant by the Examining Attorney: Reg. No. 3775003 for the mark PEOPLE’S SHOES OF ITALY (shoes disclaimed) for footwear namely, shoes; Reg. No. 4342637 for the mark THE PEOPLE’S MARATHON (marathon disclaimed) for shirts; t-shirts; Reg. No. 5130486 for the mark THE PEOPLE’S GAMES (games disclaimed) for clothing that includes, shirts, t-shirts, sweatshirts; and Reg. No. 5568156 for the mark PEOPLE’S

COUTURE (couture disclaimed) for various clothing items. As stated, these registrations were later withdrawn in the Examining Attorney's May 28, 2021 Denial of Reconsideration at TSDR 1.

However, the specimen evidence from the previously cited registrations are not evidence that the marks are in use today, or that such specimens have been used to such an extent that they have made an impression on the public. *See Allied Mills, Inc. v. Kal Kan Foods, Inc.*, 203 USPQ 390, 397 n.11 (TTAB 1979). *But see Syndicat des Proprietaires Viticulteurs de Chateauneuf-Du-Pape v. Pasquier Desvignes*, 107 USPQ2d 1930, 1942 (TTAB 2013) (in connection with the sixth *DuPont* factor, the Board found two use-based third-party registrations with their specimens of use were not irrelevant when considered with other uses) (citing *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992) ("evidence of third-party registrations coupled with evidence of prior use 'could reasonably support an inference that [the applicant's] mark is weak'")).

Also in the record is website evidence of the use of FREEPEOPLE in connection with apparel and shoes. July 16, 2020 Office Action at TSDR 68, 76, freepeople.com. This evidence was provided by the Examining Attorney for purposes of relatedness and trade channels, but we can also consider this marketplace evidence under the sixth *DuPont* factor for use of the term PEOPLE in connection with clothing.

When considering the evidence as a whole, we cannot infer that PEOPLE or PEOPLE'S is commercially weak. Therefore, this *DuPont* factor is neutral.

2. Conceptual strength or weakness of mark,

Next we consider the conceptual strength or weakness of the term PEOPLE/PEOPLE'S.

Applicant argues that “the term PEOPLES is an extensively diluted term in the clothing industry, and as a result should be considered a weak mark. For this reason alone, consumers are likely to rely on other words or features of such goods to identify their source,” such as Applicant’s design feature or the additional words GARMENT CO. in Registrant’s mark. 8 TTABVUE 24.

As stated, we have not considered the list of registrations submitted during prosecution and excerpted in Applicant’s brief. However, we do consider the previously mentioned PEOPLE’S marks with additional disclaimed matter that were initially cited against Applicant’s mark and then withdrawn by the Examining Attorney: PEOPLE’S SHOES OF ITALY (shoes disclaimed), THE PEOPLE’S MARATHON (marathon disclaimed), THE PEOPLE’S GAMES (games disclaimed) and PEOPLE’S COUTURE (couture disclaimed), all owned by different registrants. September 17, 2018 Office Action at TSDR 2-9; July 16, 2020 Office Action at TSDR 2-12; May 28, 2021 Denial of Reconsideration at TSDR 1.

Third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334 , 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (internal quotation marks omitted). *See also Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New*

*Millennium Sports, S.L.U.*, 797 F.3d 1363 , 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (“[T]hird-party registrations are relevant evidence of the inherent or conceptual strength of a mark or term because they are probative of how terms are used in connection with the goods or services identified in the registrations.”).

Therefore, third-party registrations are competent to show that a common term has an accepted meaning in a given field and that marks containing the term have been registered and used for related goods because the remaining portions of the marks may be sufficient to distinguish the marks as a whole from one another. *Promark v. GFA Brands. Inc.*, 114 USPQ2d 1232, 1244 (TTAB 2015) (citations omitted).

The third-party PEOPLE’S formative registrations in the record are small in number and PEOPLE’S SHOES OF ITALY, THE PEOPLE’S GAMES and THE PEOPLE’S MARATHON all have different commercial impressions from PEOPLES GARMENT CO. The only mark that has a somewhat similar commercial impression is PEOPLE’S COUTURE. This single registration is insufficient to show conceptual weakness of the term PEOPLES/PEOPLE’S in the clothing field.

#### D. Similarity or Dissimilarity of the Marks

We now turn to similarity or dissimilarity of the marks.

The first *DuPont* factor requires us to determine the similarity or dissimilarity of the marks when viewed in their entirety in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imps.*, 73 USPQ2d at 1691. The test,

under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. While the marks must be considered in their entirety, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Disclaimed matter that is descriptive or generic of a party’s goods is typically less significant or less dominant when comparing marks. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1257 (Fed. Cir. 2011) (when a mark consists of two or more words, some of which are disclaimed, the word not disclaimed is generally regarded as the dominant or critical term). Where both words and a design comprise the mark (as in Applicant’s mark), the words are normally accorded greater weight because the words are likely to make an impression upon purchasers, would be remembered by them, and would be used by them to request the goods. *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) (“in a composite mark comprising a design and words, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed”); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987).

“No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 224 USPQ at 751.

Applicant argues that the Examining Attorney has dissected both Applicant's and Registrant's marks, ignoring the design element in Applicant's mark in its entirety and “with no acknowledgement of the additional terms GARMENT CO.” in Registrant's mark. 8 TTABVUE 16-17.



Applicant's mark is  and Registrant's mark is PEOPLES GARMENT CO.

The marks are similar in sound and appearance in that both marks contain the term PEOPLE'S/PEOPLES. *See In re Detroit Athletic Co.*, 128 USPQ2d at 1049 (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”); *Palm Bay Imps.*, 73 USPQ2d at 1692 (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (first part of mark is “most likely to be impressed upon the mind of a purchaser and

remembered.”). Although Applicant’s mark is possessive and Registrant’s mark is the plural of “people,” the addition of the apostrophe in Applicant’s mark is insignificant. *See In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (noting that “[t]he absence of the possessive form in applicant’s mark . . . has little, if any, significance for consumers in distinguishing it from the cited mark”).

The marks differ in appearance due to the addition of a design element in Applicant’s mark and the addition of the disclaimed wording GARMENT CO. in Registrant’s mark. The marks are different in sound in view of the additional disclaimed matter GARMENT CO. in Registrant’s mark.

The marks are similar in connotation and commercial impression as the dictionary definition shows that PEOPLE’S/PEOPLES mean human beings. The additional terms in Registrant’s mark identify the nature of Registrant’s business as a garment (or clothing) company and do not significantly alter the connotation and commercial impression. As to Applicant’s mark, the root design acts as a reference to the common roots or linkage of all human beings, reinforcing the meaning and commercial impression of human beings as a group or “peoples.”

As a basis for finding the marks similar, the Examining Attorney argues that PEOPLES GARMENT CO. could be shortened to PEOPLES. 10 TTABVUE 9-10. Applicant responds that Registrant shortens its mark to PPLS, referencing the photo of Registrant’s specimen Applicant submitted with its request for reconsideration. 8 TTABVUE 17-18.

The Federal Circuit has cautioned against assuming such truncation of marks without supporting evidence. *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135 (Fed. Cir. 2015). Here the record shows a specimen with the term PPLS used in conjunction with PEOPLES GARMENT CO., but we have no way of knowing if Registrant uses other forms of PEOPLES in connection with the goods. Accordingly, we are not persuaded by either the Examining Attorney nor Applicant's arguments on this point.

Applicant argues its "partially similar mark is not likely to be confused with the similar portion of Registrant's Mark because of their other differences in appearance, sound, and overall commercial impression." 8 TTABVUE 20. Applicant submits that the "strong visual distinctiveness" and "significant contributions" of the design differentiate the marks. 8 TTABVUE 21.

The Examining Attorney responds that "the registered mark is featured in standard characters, which means that Registrant can depict the registered mark with any design and stylization, including the exact same tree root design featured in Applicant's mark." 10 TTABVUE 12.

However, this is an incorrect assertion. In *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1187 (TTAB 2018) the Board held that "when we are comparing a standard character mark to a word + design mark for Section 2(d) purposes, we will consider variations of the depictions of the standard character mark only with regard to 'font style, size, or color' of the 'words, letters, numbers, or any combination

thereof.” Therefore, we cannot assume that a Registrant with a standard character mark could also encompass all possible design elements.

On the other hand, in determining connotation and commercial impression, we can consider whether Applicant’s design is a pictorial representation of a term in Registrant’s mark, and we consider whether “the literal elements of the [Registrant’s] mark (the words and the letters) may be presented in any font style, size or color, including the same font, size and color as the literal portions of Applicant’s mark.” *In re Aquitaine*, 126 USPQ2d at 1186-1187.

PEOPLES is the dominant feature of Registrant’s mark PEOPLES GARMENT CO. Purchasers are likely to view the generic terms GARMENT CO. as having no distinguishing or source-indicating role in the respective mark. PEOPLE’S also is the dominant element of Applicant’s mark because it is the only word in the mark and the only part of the mark that can be articulated. While the design element in Applicant’s mark arguably is prominent and is integrated into the letter “P,” the letter “P” is still recognizable as a letter. The remaining design portion is simply a background carrier. Therefore, it is unlikely that consumers would articulate the design, rather than the word PEOPLE’S in Applicant’s mark.

When we consider the marks in their entirety, but give appropriate weight to the dominant element PEOPLES/PEOPLE’S in each mark, we find that the marks are similar in appearance, sound, connotation, and commercial impression. Although the marks have some differences, caused by the presence of the design element in Applicant’s mark or the generic words in Registrant’s mark, these additions are not

sufficient to distinguish them. *See Wella Corporation v. California Concept Corporation*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CONCEPT and CALIFORNIA CONCEPT and design confusingly similar).

Therefore, the first *DuPont* factor weighs in favor of a finding of likelihood of confusion.

### III. Conclusion

We find that the marks are similar, the goods are identical in part and closely related and the channels of trade and classes of consumers overlap. Therefore, confusion is likely.

**Decision:** The Section 2(d) refusal to register Applicant's mark is affirmed.